HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION Nos. 17508, 17637, 17043, 17642, 17644, 17647 and 17930 of 2007

Dated 28.08.2007

Between:

M/s. Genesis Crop Sciences (India) Pvt. Ltd. And others.

...Petitioners

and

The Commissioner & Director Agriculture, A.P., Gunfoundry, Hyderabad.

...Respondent

HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION Nos. 17508, 17637, 17043, 17642, 17644, 17647 and 17930 of 2007

COMMON ORDER:

The petitioners challenge a memo, dated 21.01.2006, and a consequential letter of the same date, through which the Commissioner and Director of Agriculture, the respondent herein took the view that the bio-products are not covered either under the Insecticides Act, 1968 (for short 'the Act') or under the Fertilizer (Control) Order, 1985 (for short 'the Control Order'). The respondent has also directed that no sale of bio-products

be permitted from the licenced premises of dealers of seeds, fertilizers and pesticides after 10.03.2006.

The petitioners contend that they are either the manufacturers or retail agents of bio-fertilizers of different brands. They also contend that though the products dealt with by them do not answer the description of 'insecticide' as contemplated under Section 3 of the Act or the 'fertilizer' as defined under Clause 2(h) of the Control Order, the respondent sought to regulate them, by issuing permits from time to time. It is urged that the effect of the impugned memo and the letter is that the permission granted to the petitioners for dealing with the bio-products stood withdrawn and at the same time, the petitioners are prohibited from undertaking the said activity. Reliance is placed upon the Judgment, dated 25.04.2006, rendered by this Court in W.P.No.8207 of 2006 and batch.

On behalf of the respondents, it is contended that the bio-fertilizers are also subject to the regulation under the Control Order and unless the petitioners obtain necessary permit or licence, as provided for under the Control Order, in respect of those products, they cannot deal with the same.

Heard Sri S.Niranjan Reddy, Sri P.Venkat Rao and Sri Chalakani Venkata Yadav, the learned counsel appearing for the petitioners and the learned Government Pleader for Agriculture.

The fertilizers and insecticides of different categories are used by the farmers, to grow various crops. To ensure maintenance of proper quality and regular distribution thereof, the Parliament enacted the Act and the Central Government issued the Control Order, in exercise of powers under the Essential Commodities Act. The Act as well as the Control Order contain a list of products, which are regulated by them. The petitioners contend that the products dealt with by them do not answer the description of either 'insecticide' or 'fertilizer' and in that view of the matter, they cannot be subjected to the regime under the Act or the Control Order.

For one reason or the other, the petitioners themselves approached the respondent, for grant of permission or licence, as the case may be, to undertake the activity of manufacture or distribution of bio-products. Permissions, in fact, were accorded by the Department, which, however, are not traceable to any provision of law. The respondent took the view that since the products

dealt with by the petitioners do not answer the description of the 'fertilizer' or 'insecticide', the permission accorded to them must cease to be in operation and that the stock available with the petitioners must be liquidated within 45 days. A further direction was issued to the effect that the sale of bio-products be not permitted from the premises, in respect of which licence is granted for sale of seeds, fertilizers and pesticides, after 10.03.2006.

It is no doubt true that in W.P.No.8207 and batch, this Court dealt with the memo as well as the letter, dated 21.01.2006, and held that no licence is required under the Act or the Control Order for manufacture or sale of bio-products, as long as they do not contain the ingredients of 'insecticide', as mentioned in the Schedule to the Act, and as long as they are not 'chemicals', endangering the environment. The parties thereto appear to have proceeded on the assumption that the bio-fertilisers are not subject to the regulation under the Control Order nor any relevant provision appears to have been brought to the notice of this Court.

Schedule-III to the Control Order deals with the bio-fertilizers. Part-A thereof prescribes the specifications and part-B thereof stipulates the limits of the bio-fertilizers. The

method of drawal of samples and analysis thereof are provided for under Parts-C and D respectively. Detailed procedure is prescribed for different items of bio-fertilizers.

The petitioners themselves state that the products dealt with by them are being used as bio-fertilizers. In case, these products are the same as those specified in Schedule-III of the Control Order, they can be dealt with only after obtaining licence, irrespective of the nomenclature given to the products by the petitioners or any other agencies. Inasmuch as the petitioners admit that the items dealt with by them are being used as fertilizers, it is better and advisable that the samples, together with the literature, throwing light upon the manufacturing process as well as the detailed chemical composition of the product, are submitted to the respondents for necessary action, in this regard. The samples, so submitted, can be analyzed, as provided for under Schedule-III to the Control Order, in a laboratory, which had the necessary facilities. The outcome of such an analysis would put an end to the controversy that shrouds the subject matter. In case, it is found to be a product, which needs the licence, the petitioners can be required to obtain licence, as a condition precedent for their dealing with the product. On the other hand, if it is

found that the product does not answer the description of any item mentioned in Schedule-III to the Control Order, no regulatory regime can be imposed upon the petitioners.

Hence, the writ petitions are disposed of, directing that –

a) it shall be open to the petitioners to submit a sample of 5 kgs of each product dealt with by them, together with the corresponding literature, throwing light upon the manufacturing process as well as the contents thereof, to the respondent herein;

b) within two (2) weeks from the date of submission of the samples and the literature by the petitioners, the respondent shall get the same analysed in a suitable laboratory and intimate the result of the analysis, to the petitioners;

c) in case, the analysis reveals that the products dealt with by the petitioners answer the description of the products mentioned in Schedule-III to the Control Order, the petitioners shall be entitled to deal with the products, only after obtaining licence under the

Control Order. On the other hand, if the result is found otherwise, the petitioners shall not be subjected to the regime under the Control Order or the Act; and

d) if the respondent fails to intimate the result of the analysis within two (2) weeks from the date of submission of the samples and the literature, it shall be open to the petitioners to deal with the products, notwithstanding the impugned letter and the memo, as long as the products are not insecticides or chemicals.

There shall be no order as to costs.

_____

28.08.2007

Note: Issue operative portion of the order by wire at party's costs.

(B/o)

JSU